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ABSTRACT

This series of short articles discusses two separate educational policy issues: the federal role in education for the handicapped and tuition tax credits. Concerning the first issue, the document discusses the background of P.L. 94-142 and its first 5 years, concluding that, although accomplishments are impressive, there are still difficulties in implementing the reform. It is suggested that the law has meant improvement in substandard districts but has sometimes had depressing effects in progressive districts. Several brief articles on education of the handicapped then follow, focusing on the issues confronting policy makers in the eighties, the fairness of "fair hearings," the costs of equity, problems with and prospects for implementation of the mandated reform, and the history of special education. Concerning the second issue, tuition tax credits, the document briefly discusses whether they will be a federal priority for the eighties. The author outlines how tuition tax credits work, recent legislative activity, issues and implications, their costs, and their effects on the costs of public schooling. He asks if tuition tax credits will benefit one income group more than another, will be equitable among ethnic groups, and will be legal and beneficial to the public. (Author/JM)

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EDUCATION FOR THE HANDICAPPED
What Is The Appropriate Federal Role?

Speaking out in the discussion session of a recent special education conference, a handicapped person depicted well the importance of education for the handicapped: "Whether it has to be mandated by federal or state professionals or bureaucrats, our only hope is in education. We can't get it in hospitals, in the streets, in correctional institutions. If we have to put it in that law, it's about time we did it, and if the only way is the federal government, then I applaud."

The law in question is P.L. 94-142, the Education For All Handicapped Children Act of 1975. These comments reflect three assumptions underlying federal support of education for the handicapped. First, handicapped children in the past have been denied access to educational opportunities that should rightfully be theirs. This right was confirmed and its denial judged illegal by the courts in several key cases.

Second, equal opportunity for handicapped children is closely intertwined with the provision of an appropriate education designed to meet certain minimal guarantees as it addresses their learning needs. This has led to the development of extensive research and policy defining appropriate identification procedures, programs, services, and costs for educating handicapped children. More than an issue of right, it is a question of how education can work positively as a means of alleviating the problems of disadvantaged individuals. In this respect, special education shares many features with bilingual education and other categorical programs.

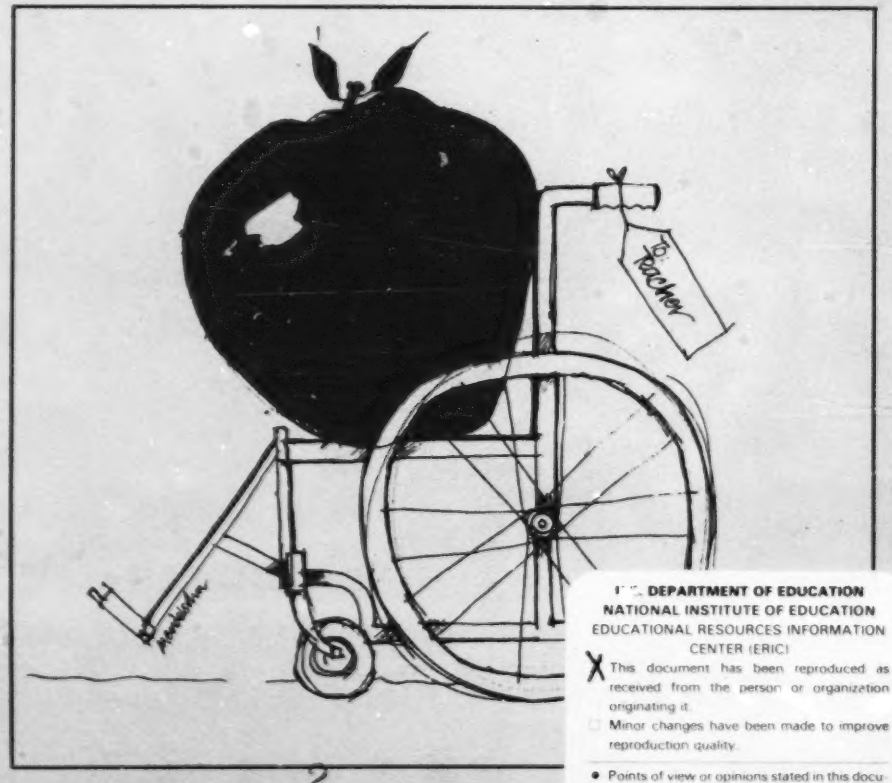
Third, federal initiative in requiring programs and services has been crucial to guaranteeing equity to the handicapped. Not only has the federal government defined such equity as a national mandate, but it has helped to legitimize comprehensive reform by leading a concerted drive to achieve new standards of access and opportunity.

This is not to say that there have been no problems attending the federal role in guaranteeing equal educational opportunity for handicapped children. On crucial matters of policy and program the expanded federal role has to some extent supplanted state and local decision-making authority. At the same time, many who operate programs at the local level complain that the time and resource demands of responding to federal regulations are so great as to be self-defeating.

These problems have been exacerbated by inconsistencies in the federal role. Although the federal government has created responsibilities for itself in data collection, policy development, technical assistance, and enforcement of regulations, its ability to help local communities carry out the letter of the law is hampered by limited funding and by shortages of personnel.

Another limitation at the federal level has to do with priorities. P.L. 94-142 established and required many areas of federal oversight, some of major importance and some of minor importance. Federal agencies face the problem of balancing the need to monitor important areas carefully with the requirement to monitor all areas adequately—without resources to do either properly.

There is also a serious lack of coordination among federal agencies playing a role in education for the handicapped, to such an extent that local administrators have sometimes received conflicting interpretations of regulations, or have successfully



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negotiated an issue and agreed upon an acceptable course of action with the Office of Special Education only to receive a notice of violation for that same action from the Office of Civil Rights. These difficulties will, it is hoped, be tackled under the recent interagency agreement between the two agencies.

With all this as background, what is the appropriate federal role vis-a-vis special education? To ask such a question means inevitably to raise a series of interdependent questions. How do state governing authorities fit into the picture? To what extent should educational priorities be locally determined and programs locally controlled? What authority should parents exercise in the development of programs and services for handicapped children? And how do the possible answers to all these questions square with the needs of the handicapped themselves?

Once again it is useful to look at underlying assumptions in order to construct a frame of reference in which issues and differences of opinion can be approached sensibly. First, the federal responsibility is to protect the rights of handicapped children; its regulations and enforcement procedures are directed, above all, to guaranteeing compliance with the mandate to serve this particular group of citizens, and not so much to the capacity or prerogatives of state and local structures of governance, administration, and service delivery.

Second, the state role is to provide free public education for all children. States have the primary legal responsibility for public education; in the past they have done much to expand service for the handicapped, as evidenced by the numerous state laws on the books for special education at the time P.L. 94-142 was enacted.

Third, local communities furnish educational services; traditionally they have controlled, within the lines established by state law, much of the actual operation and content of public schooling.

Fourth, the role of parents is to protect the interests of their children, which they do by means of advocacy, litigation, and participation in programs.

Fifth—and too often overlooked—is the role of handicapped children themselves, not merely as passive recipients of publicly financed services, but as active participants in the programs that have been constructed for them. They could potentially be a shaping force in improving the design, style, and social benefits of these programs.

What has been accomplished?

Five years of P.L. 94-142 have generated considerable experience with which to evaluate the emerging federal role in special education. A review of the law by a U.S. Department of Education task force underscored many of its accomplishments. Primary among these were the elimination of state laws and practices that excluded handicapped children from schools, inclusion of many more children in special education programs, and the use of the least restrictive environment concept.

The statistics too are impressive. The *Second Annual Report to Congress on the Implementation of P.L. 94-142*, published in 1980 by the Department of Education, documents the numerical progress being made under the law. Since the 1976-77 school year there has been an increase of nearly 328,000 handicapped children receiving special education and related services in the United States. The total number of such children had risen to 4.03 million by the 1979-80 school year. When the first comprehensive count was taken four years ago, 8.2 percent of public school enrollments in the nation were in special education programs. By last year the figure had risen to 9.5 percent. Twenty states are now serving more than 10 percent of their public school population in programs for the handicapped. The five states reporting highest figures range from 12 to nearly 18 percent of the school-age population. Between 1978 and 1980 some 43 states increased the number of children reported in their special education programs.

On the other hand, as the Department of Education task force notes, there are still difficulties in implementing the reform. For example:

- In some parts of the country large numbers of handicapped children remain unidentified.
- Many children face long waits before they can be educated and placed in appropriate programs.
- A disproportionate number of minority children are still being misclassified and placed in programs for the mentally retarded.
- The quality of education in some non-educational institutions is substandard.
- There are significant differences among states and school districts in the

briefly . . .

William Hartman served as consulting editor for this issue of *Policy Notes*. Hartman was research associate at IFG until December 1980, when he assumed the position of associate professor of education at the University of Oregon. He and Peggy Hartman wrote the first draft of the lead article—on the changing federal role in special education—to which *Policy Notes* editors Richard Navarro and Thomas James lent editorial assistance. This article incorporates points from conference presentations by Betsy Levin, general counsel for the U.S. Department of Education, Myron Atkin, dean of the School of Education, Stanford University, Lisa Walker, congressional liaison for the Institute for Educational Leadership, and Terry Wood, assistant superintendant for special education and special schools, Los Angeles County School System.

The IFG conference was a national invitational colloquium sponsored by IFG in October 1980 to explore policy issues in special education. Much of the material in this newsletter stems from papers presented there and discussions held at that time. The editorial, "Where To Go From Here?", by Frederick Weintraub, assistant director for intergovernmental relations at the Council for Exceptional Children, derived from his keynote address at the conference. William Hartman and Jay Chambers, IFG associate director, wrote the paper on the "resource-cost model." The newsletter article was written by Joan O'Brien, a research assistant at IFG.

Christine Hassell, a graduate student in education at the University of California, Berkeley, wrote "Learning Vs. The Law," an article about the barriers to implementation of P.L. 94-142, based on a paper by Jane David, Bay Area Research Group, and David Greene, SRI International.

"How Fair Fair Heaings" grows out of research by Michael Kirst, professor of education and business administration, Stanford University, and Kay Bertken, a graduate student and formerly a research assistant at IFG, who rewrote their research material for the *Policy Notes*.

On the historical antecedents of special education, *Policy Notes* editor Thomas James summarized a paper written by Marvin Lazerson, professor of education at the University of British Columbia. "Implementation of A Mandate," the article analyzing federal legislative action in the past decade, comes from Kathy Hull, IFG research assistant, now with the St. Louis City School District as a staff evaluation specialist. ■

types and qualities of related services that are provided.

- Some school districts are using "canned" individual education programs (IEPs) in which two-thirds of the handicapped children receive the same IEP.
- Certain severely handicapped students need an extended s hool year to benefit from their educational program; this creates a conflict when state laws prohibit attendance for more than 180 days.
- Handicapped children are not always placed in the least restrictive environment appropriate to their educational needs.

These difficulties show the importance of attending closely to the practical obstacles to implementation. Because of its preeminent role as enforcer of rights for handicapped children and as legitimizer of expanded services on their behalf, the federal government is inextricably involved in the process of local implementation. The nature of its role cannot help but be a decisive factor in the evolution of programs.

Many of the intergovernmental issues are not susceptible to easy or rapid resolution. Effective enforcement, high costs, fragmentation—much remains to be worked out. By recognizing the problems and beginning to focus federal resources on coordinating efforts both within the Department of Education and with other federal and state agencies, policy makers can do much to bring about continued improvement in programs for handicapped children. Ar.d by using the federal government's technical assistance efforts to build state capacity for program monitoring, they can bolster the federal-state-local partnership in implementing the law.

Compliance to commitment

A further stumbling block, one that crops up over and over again where federal involvement in local decision making is concerned, is the administrative burden of regulation and reporting requirements. To many officials and practitioners it often seems that procedural issues, such as revision of forms, notification of clients, and attendance of meetings, have driven out the more important substantive issues, such as developing curriculum, defining instructional methodologies, and exploring available research on educating handicapped students.

For school systems that were considered substandard in the sense that their programs for the handicapped were minimal and were denying equal access to education, the effects of the federal mandate have been demonstrably positive. Many of the worst abuses have been eliminated as procedural requirements have led to an upgrading of these programs. But on the other side, for school systems that were obviously progressive in their stance toward handicapped children, and that were providing equal access and working diligently on curriculum improvements, the effect was often depressing. Coercion could easily become a barrier to creativity and commitment in districts that were doing their best to provide equal educational opportunity for handicapped children.

The individual educational program (IEP) is perhaps the best illustration of this point. The IEP has focused attention on the individual handicapped student. For students who in the past were ignored or slotted into programs at the convenience of schools, the change has been beneficial. But in many localities, individualization was already being done in a collaborative mode among parents, teachers, other professional staff and the handicapped children themselves. The specificity of the federal law about what the IEP must contain and how it must be developed has stifled these efforts. The paper accountability created by the IEP has led educators to set minimum objectives that can be reached easily instead of maximum ones that might serve as incentives and aspirations. Fear of the consequences of not meeting the outcomes specified in an IEP has caused educators to lower standards. This emphasis on process rather than substance has, many would say, detracted from special education.

Two related observations on the federal role are in order here and can serve as both a conclusion and a point of departure for future discussion. The first is to reiterate that what is needed by districts from state and federal agencies alike is useful technical assistance, aimed not at forcing districts into compliance with the law but rather at improving the quality of education provided to handicapped children. It often seems, from the standpoint of local officials, that state consultants who used to help districts with educational problems are now spending their time monitoring.

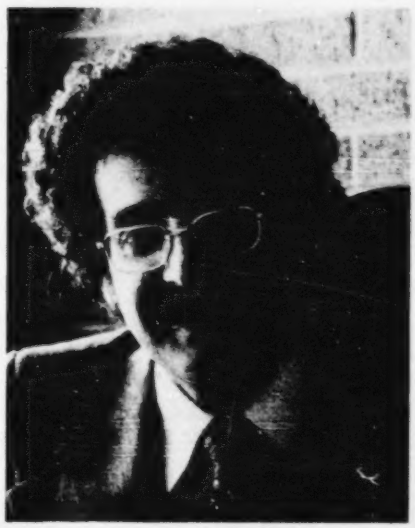
The second observation is that there is a need for stability, a period of continuity and at least relative program security in the field of special education. Both P.L. 94-142 and its companion civil rights statute, Section 504 of the Rehabilitation Act of 1973, have caused great changes. Interpretation of policies by federal and state agencies has been inconsistent and at times conflicting. What is needed is a time for consolidating the gains made, focusing on special education issues rather than on administrative procedures, rejuvenating special education personnel, and building more cooperative working relationships with other agencies and with parents. ■

WHERE TO GO FROM HERE?
Comments By Frederick Weintraub

The fear of not getting an education has disappeared for most handicapped children today. For that, policy makers and educators should take great pride. The Education for All Handicapped Children Act of 1975 represents a major social achievement. But legislation must not be the goal. Rather, it is one step along the way toward the real goal of providing quality education for all children.

What issues will confront policy makers concerned with education for handicapped children in the 1980s? To answer this question I will review four themes that were important in the 1970s and presage the issues of the 1980s:

(1) Policy determines the degree to which a minority, in this case handicapped children, will participate equitably in society.
(2) Policy determines the degree to which minority children are subject to abuse from the controlling majority.
(3) Policy affects how society will perceive or behave toward a class or group of human beings.
(4) Policy affects how a group or class will perceive themselves.



First, policy determines the degree to which handicapped children will participate equitably in society. This is a traditional civil rights theme, but a new notion in relation to handicapped children. It surfaced as a result of two issues: *exclusion* and *equality of education*. In the late 1960s

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HOW FAIR FAIR HEARINGS?
A California Study

A procedural reform mandated by The Education for All Handicapped Children Act to protect handicapped children from arbitrary administrative decisions may itself be the source of inequalities in the distribution of educational services to the handicapped.

This possibility moved Michael Kirst and Kay Bertken to investigate the hearings required to settle disputes between parents of handicapped children and the public schools. How have the hearings been used, to what effect, and to whose benefit? These are the questions addressed in Kirst's and Bertken's research on special education fair hearings in California.

The hearing provisions of the federal law include many procedural protections associated with criminal trials. School districts and parents have the right to collect and present evidence and to call and cross-examine witnesses. Parties may expect a written resolution of their dispute by an impartial decision maker who has knowledge of the child's handicapping condition. Either party to a local hearing may appeal an unfavorable decision to a state-level hearing and an unfavorable state-level decision to the courts. The law provides for broad access to these hearings. Any disagreement related to the identification of a child as handicapped or the diagnosis of a disability or the provision of an educational program and related services can trigger a request for a hearing.

The provision of such extensive procedural protections was prompted by the historical abuses of handicapped students in the schools: exclusion of children from publicly supported education; stigmatization of children with inappropriate labels; and discrimination, especially against minority children, by inappropriately identifying them as handicapped and isolating them in segregated and inferior programs. The hearing provision of the law guarantees fairness and careful consideration when decisions with such a potential for harm are made.

With the help and cooperation of the California State Department of Education, Kirst and Bertken reviewed the case histories and decisions of 145 local level hearings as well as the 50 state-level hearings and one court-level appeal generated from those local cases. All the hearings were held between July 1, 1978 and December 1979, the first year and a half of uniform hearing regulations in the state. They constitute all the hearings of nine relatively large urban and suburban districts, and they account for nearly half of the total number of such hearings held in California before 1980.

The researchers' findings are several. The hearings were used infrequently, a surprising result given the great number of decisions made in the program determinations for each of California's 350,000 special education students. Less than one-tenth of one percent of the state's special education enrollment participated in these fair hearings. However, in at least two school districts, managing hearings became a full-time job for at least one special education administrator.

Kirst and Bertken found that few of the hearings were concerned with efforts to change or improve the special education program or with abuses defined by law. The concern of 110 out of the 145 local hearings was whether public school districts should pay for private school tuitions for particular children. Parents in all of these cases contended that the public schools could not provide an "appropriate education" and should pay the costs of private schooling. Many of the children involved were already enrolled in private schools; many had been receiving public tuition support.

The second set of issues most frequently debated in these hearings, according to Kirst and Bertken, concerned related services—individual tutoring, testing, counseling, various therapies, or transportation service. In more than half of the 32 hearings that addressed these issues, parents asked school districts to pay for services to be provided by particular private practitioners.

Higher income-ranked parents were much more likely to pursue new services and a variety of related services than were those in the low-income group.

Most of the cases reviewed by Kirst and Bertken were parent requests for more frequent, more individualized or private services. School districts in these cases maintained that they were already offering appropriate services. No parents wanted their children excluded from special education. There were debates over the diagnosis of children's handicaps; several involved children who were not recognized as handicapped by the school districts but whose parents wanted them identified and served.

Hearing determinations resulted in allocations of expensive services and overturned school district decisions in a majority of cases reviewed in this research. Private school tuition grants ranged from $3,000 to over $20,000 for residential placement. More than half of the parents who had been denied some portion of the claims at local hearings appealed to state-level hearings, where more than half the decisions were overturned in the parents' favor.

Although their research showed the hearings to be powerful tools for parents who wanted to contest the determinations of their school districts, Kirst and Bertken point out that there is an important distinction between the cases of parents who were successful and those who were not. A majority of the parents who participated in hearings were trying to stop school districts from making changes in their children's programs, especially if the children were being supported in a private school. These parents won a large majority of their claims. On the other hand, parents who were attempting to secure a new service or a new private school placement lost more of their cases than they won. The hearings seemed to be strong supporters of the status quo.

Who were the parents who were getting extended or new services for their children? Kirst and Bertken's findings confirmed what they had learned from research about administrative hearings in other settings. Low-income and minority parents participated in hearings less often than their numbers in the school districts would suggest. Most of the low-income and minority parents who did participate were represented at their hearings by an agency attorney or by a representative of a private special education school. Few participated independently.

In addition to the low participation rates, Kirst and Bertken found that low-income parents pursued a limited range of issues in their hearings. Nearly all of them were trying to maintain public support of their children's private school placements while the school districts were trying to return them to public programs. Higher income-ranked parents were much more likely to pursue new services and a variety of related services than were those in the low-income group.

Surprisingly, Kirst and Bertken found that once parents participated in the hearings, favorable hearing decisions were negatively related to income ranking. Low-income parents won a higher pro-

portion of their cases, in all categories of issues, than did middle- or high-income ranked parents. Attorneys did not seem to provide any advantage in this collection of local hearings. At the state-level appeals, parents accompanied by attorneys did better than those not represented.

Another observation about the hearings was that many of them represented battles between the public and private sectors over who should provide the services and who should pay. In many cases the decisions turned on procedural compliance issues rather than evaluations of the relative merit of the two proposed program alternatives. In many cases, missed deadlines or the school districts' failure to obtain required signatures resulted in tuition grants to private schools.

The researchers attribute the nature of these hearings to the vague provisions of the federal law, that handicapped children have the right to an education "appropriate to their unique needs." There are no explicit limits on the schools' obligation to any individual child. Some parents have seized this as an opportunity to plea for additional services for their children.

None of the cases reviewed in this research involved efforts to make general changes in public school programs. It is possible, Kirst and Bertken point out, that groups seeking such reforms were using other avenues for their purposes—civil rights actions or direct court suits, for example. The major impact of the special education fair hearings has come in the time and expense of running the hearings and in the allocation of expensive tuition payments to individual children.

While their findings are compatible with other available evidence about special education hearings, Kirst and Bertken acknowledge that their study is limited in time and location. They are hoping that their data will provide useful baseline information for future studies in California and comparative studies elsewhere. ■

ESTIMATING THE COSTS OF EQUITY

The "Resource-Cost Model"

Over the past 15 years states and the federal government established numerous programs to meet the needs of certain groups of school children, such as the disadvantaged, non-English speakers, and the handicapped—but no common, equitable funding system evolved. Concurrent with the development of these programs has been a movement to eliminate differences in local spending on education. In particular, policy makers have given special attention recently to ways in which state aid can take into account local price differences in educational resources.

Jay Chambers, associate director of IFG, and William Hartman, associate professor of education at the University of Oregon, have created a "resource-cost model" that provides a common funding system for the development of any educational program and simultaneously accounts for local variations in student needs and resource prices. Hartman has used the model to estimate the 1980-81 national expenditures on special education.

The resource-cost model has three purposes. It provides a systematic method of estimating the costs of special education, compensatory education, vocational education, bilingual education, elementary education, and secondary education programs. It supplies an equitable system of funding educational services in local school districts. And it furnishes educational policy makers with a conceptual framework on which to base their decisions regarding educational programs for differing groups of students.

How does it work?

Cost estimates are based on student characteristics and the pattern of programs to be used. The procedures require specification of the student population, the instructional programs and services to be used, the resources that comprise each program, the price of each resource, the distribution of students across various programs and services, and the student-personnel ratios of programs. Costs are calculated on a program-unit basis rather than on a per-student basis. This costing system more closely resembles that of the district since the marginal cost of an additional student is usually very small until the maximum class size is exceeded and an additional program unit is needed.

The cost-based funding approach used in the model assists school finance reform to achieve its goal of equity in the distribution of state aid to local districts. Additional costs when students have special programmatic needs are estimated and actual resource prices are used in the funding calculations. Thus districts with higher costs can be appropriately compensated. In addition, if the model is to be used, then policy makers must establish an adequate educational program for each group of children. Once adequate programs are defined, aid may be systematically distributed according to the student needs of each district.

The resource-cost model can be used at all government levels to make projections into the future as well as to evaluate current options. At the federal level it provides a planning device for estimating the magnitude of the costs of various educational programs. However, nationally acceptable programmatic and price variables would need to be established for the use in the model. At the local and state levels the model can be used for program planning, estimating program costs, comparing alternative programs, and cost-effectiveness studies.

The costs and effects of implementing changes proposed by new legislation or regulations may be examined. Cost tradeoffs both within and between programs can be evaluated and priorities among competing programs can be established to meet budgetary requirements. Thus the model focuses attention on specific areas where policy makers previously did not have the information to make rational decisions. With this model they may determine both a program's cost and its effects on students—without the usual guesswork.

National cost estimates for special education in 1980-81

Estimating the national costs of educating handicapped children is an uncertain process for several reasons. State definitions of the handicapped children to be served are not consistent and there are no nationally accepted standards for special education programs and services. Thus it is difficult to identify which instructional programs and supportive services should be examined, to specify the constituents of each program or service, and to determine the proportion of handicapped students who require each program or service.

In addition, the reported costs of special education, particularly average cost per student figures, do not provide sufficient information for national cost estimation. In response to the difficulties, William Hartman used the resource-cost model to estimate the 1980-81 national costs of special education. He also used the model to do a sensitivity analysis to ascertain which variables had the greatest impact on the projected costs. The resulting estimates and information should be of interest to educational policy makers.

If all handicapped school-aged children receive an appropriate education in 1980-81, the results of this study predict that the

national cost will most likely be approximately $9.0 billion. This estimate indicates a considerable increase in special education costs since 1976-77 when costs were estimated to be $4.5 billion. Low and high alternative estimates were obtained because of the uncertainty underlying the values of the variables in the most likely estimate. The low alternative estimate is $7.3 billion and the high estimate is $12.4 billion.

The range of estimates indicated that variations in the assumptions about the ingredients (e.g., definitions of "handicapped") used in the model affect the cost estimates. A sensitivity analysis was undertaken to identify the variables with the most impact upon costs. The assumed incidence rates of the handicapping conditions were the variables found to have the largest impact. The variables with the second greatest impact were the numbers of students assigned to instructional units (i.e., student-teacher ratios.) Other variables that considerably affected costs, in order of cost impact, were personnel salaries and benefits, placement patterns of students in instructional programs, and the use of aides.

The estimates raise two policy questions. First, who will pay the potential increase of $4.5 billion—local school districts, states, or federal agencies? Even if P.L. 94-142 is funded to its authorization level of $3.2 billion, there is still a potential deficit of $1.3 billion.

Second, will there be more program control with an increase in state or federal funding? An increase in state or federal funding may reduce a local school district's flexibility in implementing programs that meet individual circumstances since programming decisions affect costs.

The sensitivity analyses provide much useful information. For example, the analyses show that the choices of incidence rates for handicapping conditions are critical since they are major determinants in projected costs. Incidence rates are primarily educated guesses. They are not based on educational theory or research; they are defined differently from state to state and are subject to political, social, and historical influences. Thus, incidence rates should be viewed with caution. It is interesting to note that the study revealed that a one-percent increase in incidence rates, holding all other variables stable in the most likely estimate, raised the projected costs by $708 million, the number of pupils by 470,000 and the required number of teachers by 22,000.

The study emphasizes the need for more research into the related service to be included in special education programs. Related services are the special developmental, corrective or supportive services required by handicapped students. More information is needed on which related services should be included, the extent of student need for these services, and the costs of providing them. As the pressures on educational budgets grow, intergovernmental and interagency support in the provision of related services for handicapped children will become increasingly important.

The resource-cost model can be used in any educational setting where planning and cost estimates of educational programs are needed. It is a versatile planning tool and should provide valuable assistance to policy makers. ■

IMPLEMENTATION OF A MANDATE
Problems & Prospects

Parents and educators in the United States have sought educational services for handicapped children for over a hundred years. Throughout most of that time progress was limited to gaining access for children with particular handicaps in certain states or localities.

During the past decade, however, there have been judicial and legislative victories at the federal level. The range of free services available to handicapped children has widened and the number of children able to receive them has increased nationally. While the results are encouraging, full realization of the federal initiative has not yet been achieved due to the broad scope of mandated reforms and numerous policy questions raised by them.

Reforms mandated

Between 1970 and 1975 Congress passed nearly 50 pieces of legislation favoring the handicapped. Two of these are especially noteworthy and exemplify the range of reforms legislated. The first is a single sentence within Section 504 of the Vocational Rehabilitation Act (1973): "no otherwise qualified individual in the United States, shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or any activity requiring federal assistance."

For the many handicapped children legally excluded from federally funded programs because of learning and behavioral problems, this meant local districts would be required to integrate these children into existing programs or else establish programs to serve them.

Two years later Congress enacted Public Law 94-142, the Education for All Handicapped Children Act. Amending previous special education legislation and incorporating provisions of earlier laws and court decisions, P.L. 94-142 requires that:

- Active search and find campaigns be undertaken to locate all handicapped children excluded from public education.
- Free and appropriate education services be available to all handicapped children ages 3-21 by September 1, 1980.
- Handicapped children be placed in the least restrictive environment that meets their unique needs.
- Each handicapped child be provided with an individual educational program (IEP) that specifies the child's present skills, educational and related needs, short- and long-term educational goals, and methods for assessing student progress.
- Parents be included in the assessment team that develops their child's IEP.
- Nondiscriminatory testing and evaluation procedures be used in placement of handicapped children in special education programs.
- Due process procedures be available to parents who question the placement of their children.
- All student records be kept confidential.
- Priority for placement be given to handicapped children not currently receiving services and to those with severe handicaps.
- Plans to accomplish these goals be developed by both local and state educational agencies.

To assist state and local educational agencies in accomplishing these goals P.L. 94-142 provides for an increase in federal funding of special education. Congress established rising levels beginning in fiscal year 1978 with five percent of the national average expenditure per pupil, mandating that at least 50 percent of the funds be channeled to the local level. In 1982 and thereafter the federal authorization reaches its maximum of 40 percent, with local districts receiving 75 percent of these funds.

Policy issues unresolved

Five years after passage of P.L. 94-142 and two years since enactment began, reactions to the law and its consequences have been mixed. Most supporters of spe-

cial education agree that mandating procedural steps and expanding federal aid represent great leaps forward. Parents and advocacy groups concerned with the welfare of handicapped children are demanding more specialized programs, related services, and voice in determining the appropriateness of placement and services.

Those faced with implementing the law—and who simultaneously must deal with many constituencies and other programs—see it from another perspective. Demands on local and state resources for additional services and staff to comply with the law are immense. Current federal appropriations for special education are at approximately one-third of their authorized levels and amount to only 12 percent of the total cost spent on these services in American communities. Federal agencies monitoring compliance are by some reports undertrained and understaffed. These agencies often have conflicting interpretations of legislated mandates, making local compliance difficult at best. All those concerned with special education would agree that many significant policy issues require resolution before full implementation of the reforms can be achieved.

Most essential to answer promptly are those questions dealing with procedural compliance. Although P.L. 94-142 and other special education legislation do mandate goals and timelines for reaching them, some of the goals lack clarity. In addition, views on compliance often differ between parents of handicapped children and districts that serve them. These views must be integrated into a consensus so that programs can be implemented effectively.

At stake are the handicapped children themselves, who require specialized educational programs but as yet don't receive them. Estimates suggest that 10-12 percent of the school-aged population require such assistance, but those numbers of children have not been found. It is possible either that handicapped children do not exist in those proportions or that present search-and-find campaigns to locate them have been insufficient. How can a local district serve children who are not found? How will it know when all of those children are located? What measures can districts take to insure that locating handicapped children is an ongoing and effective process?

Of the children located, many remain without services. An April 1980 report by a coalition of educational advocacy groups states that "15,000 handicapped children in New York City are on a waiting list for evaluation and special education placement." Similar situations exist in other urban areas with large student populations and limited staffs for evaluating student needs. How can districts speed up the evaluation process without sacrificing quality and incurring excessive costs? Where will they find and how will they finance the staff required to serve those children who do need help?

What constitutes an appropriate education? Lack of consensus leads to lack of compliance, which often leads to lengthy and costly hearings and litigation.

In addition to serving handicapped children, districts must make sure that the education received is appropriate to each child's needs. What constitutes an appropriate education? Lack of consensus leads to lack of compliance, which often leads to lengthy and costly hearings and litigation. To reduce this additional burden, districts must develop means for resolving the gap between what they can realistically offer and what special education advocates see as the ideal.

Providing such services costs money. So does seeking and finding qualified students, increasing evaluative services, opening new classrooms, hiring support staff, and offering new programs. If an inexhaustible supply of funds were available for such measures, implementation of special education reforms would be easy. But this is not the case, for even if full funding of P.L. 94-142 were reached in 1982, the federal authorization ceiling is currently fixed at $3.16 billion. While this may appear to be a substantial sum, current cost estimates for 1980-81 special education instructional programs alone are approximately $7 billion. Given declining tax bases in large urban districts and tax limitation measures such as California's Proposition 13, it is debatable whether local and state governments will continue to pay such a large proportion of federally mandated special education programs.

If additional federal aid is not available, none but the wealthiest school districts will be able to comply with current laws. Handicapped children will remain unserved or underserved; school personnel will be disheartened; and parents will return to the courts, a financial burden the schools cannot afford.

If the proportion of federal aid for special education is substantially increased, different problems might arise. For if increased federal aid comes at the expense of other interest groups, which also expect additional funding, then fierce political battles pitting educational groups against one another will ensue. Even if federal appropriations increase equally, many educators fear that such funding may lead to increased federal control of education and a loss of state and local autonomy. ■

LEARNING VS. THE LAW
New Federal Data

Two researchers working on a nationwide study of local implementation of P.L. 94-142 say that full implementation of the law will not occur until certain important barriers are overcome. Their position is based on data collected during 1978-79, the first year of a four-year study sponsored by the U.S. Department of Education.

The major finding suggested by the data thus far, according to Jane David of the Bay Area Research Group and David Greene of SRI International, is that the letter rather than the intent of the law is being met:

- Implementation is heavily influenced by what was occurring at the local level prior to the law.
- Program placement and services are based on availability in the district rather than the needs of the child.
- Inservice training and staff development are focused on rules and legal procedures rather than on handicapped children and their needs.

David and Greene have identified three barriers that help to explain these findings: scarce resources, limitations and uncertainties in the state-of-the-art of special education, and organizational characteristics. Resources affect the availability of quality staff and the provision of services and programs to the handicapped. State-of-the-art problems arise from trying to define what is meant by "appropriate" or "need" in individual cases when there are often no guidelines or generally accepted ideas on how to identify or serve particular needs of children.

The third barrier, organizational characteristics, refers to features that are built in to public school systems and that affect their capacity to change. Local individuals responsible for carrying out the law find themselves constantly balancing demands of superiors, students, parents, and others they serve. In order to manage these competing demands they develop strategies to cope with the pressures placed upon

them. These strategies affect the focus of the implementation process.

Organizational characteristics also refer to individual roles and responsibilities, both of which have been altered by P.L. 94-142. The effects on traditional relationships are becoming apparent among parents, school professionals, and public agencies serving the handicapped. When traditional roles and areas of responsibility are maintained, they created barriers to full implementation of the law.

The researchers offer two strategies for overcoming organizational barriers: boundary crossers and one-to-one trainers. A boundary crosser works in both special and regular education, facilitating communication and coordinating activities between the two groups. A one-to-one trainer helps regular education teachers deal with the daily problems of working with special education students and the law.

Comment and analysis

The barriers identified by David and Greene help to explain problems attending the implementation of P.L. 94-142. However, strategies for overcoming these barriers may have only limited results unless one basic dilemma is addressed: the use of legal procedures to achieve educational ends.

For instance, due process proceedings may be an appropriate response to the need for protection of the rights of handicapped children in placement decisions. But there is no guarantee that the outcome of these hearings will enhance the learning environment of the child. Similarly, from the perspective of those who are charged with implementing the law, involvement in fair hearings and other policy mandates may limit the opportunities for teacher and administrator discretion. Strong defensive strategies have arisen to protect one's position, often at the expense of flexibility and learning.

Learning requires flexibility, experimentation, making mistakes. The legal mechanisms demand strict adherence to form, procedure, rules. Oftentimes learning and legal practice are at loggerheads.

Imposing legal means to achieve educational ends and mandating that educators follow legal procedures to deliver their services may be inconsistent with these educators' training and expertise. The result is rule-bound rather than child-oriented implementation of the law. From this perspective two of the most significant barriers to full implementation of P.L. 94-142 are the incompatibility between policy means and ends, and the incompatibility between the policy framework and its institutional setting.

If we view implementation as a process in which school personnel learn to adapt to new policies and procedures, then the dilemma becomes more apparent. Learning requires flexibility, experimentation, making mistakes. The legal mechanisms demand strict adherence to form, procedure, rules. Oftentimes learning and legal practice are at loggerheads.

The legal implications of deviating from rules are a source of fear and uncertainty to those at the local level who are working in new roles and areas of responsibility. Those implementing the law will respond with rigidity and conformity to legitimate their decisions. Under these conditions, even professionals who thrive on the freedom to make decisions according to their own trained judgments will adhere to rules rather than following their own discretion. It is here that we find the incompatibility of the policy and its setting. Avoiding discretion impedes professional services and stifles the capacity to adapt to the changing and individualized needs of students.

What directions do David and Greene suggest for future policy? Local solutions should be encouraged; this translates into a need to emphasize assistance rather than monitoring. If procedural compliance can be substantially achieved without realizing the intent of the law, heavy-handed monitoring will not significantly improve practices regarding handicapped students.

Moreover, the design of technical assistance strategies must acknowledge the constraints within which local districts operate. These strategies must take into account the limits on resources and the types of organizational barriers that hinder implementation.

David and Greene argue that assistance should emphasize the use of people rather than materials, and it should facilitate change in existing roles. This suggests the importance of disseminating strategies like boundary crossers and one-to-one training in areas such as inservice classes, support to regular teachers in referral, participation in the individualized education program, and mainstreamed students. Training should not only meet the immediate practical problems of "what do I do now?" but also reduce the anxieties associated with new and challenging demands. ■

THE OTHER SIDE OF BENEVOLENCE
Efficiency As A Cure-All?

Anyone interested in the historical antecedents of programs for handicapped children will find a rich resource in "The Origins of Special Education, 1890-1940," a recent policy paper by Marvin Lazerson, professor of education at the University of British Columbia. Lazerson traces the development of public policy from the progressive era after the turn of the twentieth century. It was then that the first comprehensive rationale was developed for treating handicapped children as a special population and for designing separate programs to address their needs.

During the nineteenth century, according to Lazerson, the concern for educating the handicapped had been limited to institutionalizing deviant children who were seen as threats to themselves and others, or whose parents were not able to care for them. Generally, the "responsibility for handicapped children was private and familial." But with the prodigious expansion of public schooling through the century, combined with the enforcement of compulsory attendance laws after 1900, the issue of public responsibility for handicapped children was "brought directly into the schools." A new rationale began to emerge, reflecting the educational philosophy of the progressive era. Instead of viewing handicapped children as a custodial problem to be solved by putting them in residential institutions or isolating them at home with families, the progressives discovered what they saw to be an educational problem of "maladapted" schools.

Lazerson demonstrates how the solutions to this newly defined problem were found in "the application of systematic expertise and benevolence" in the form of "special schools for individualized instruction, opportunity classes, developmental classes, orthogenic classes." Efficiency and mass educational opportunity became the panacea for what one educator called "backward and defective children." Elwood P. Cubberley's formula for the

public schools came to epitomize the concerns of the special education movement: "diagnosis, proper classification, curricular adjustment, restatement of educational directives, revision of teaching methods, differentiated instruction, and proper training and habit formation."

As enrollments, average daily attendance, and school expenditures climbed dramatically at the beginning of the twentieth century, educators began to make some fateful judgments about the nature of their clientele. Lazerson recounts that "in a series of 'retardation' studies early in the century," which identified "cases in which youth were overage for their grades, the dilemma of schooling seemed to be how poorly large numbers of youth were doing in school." The best known retardation study found in 1909 that more than a third of all children in elementary schools were more than two years behind in school for their age. On the surface, "feeble-mindedness," as it was called, was one of the most serious problems facing the schools. The progressives' argument for a different kind of teaching to reach such children seemed self-evident.

Lazerson emphasizes that advocates tended to associate retardation "with the foreign born, truants, and the mentally deficient." Quite simply, "having fought to bring all children into the schools, educators were now obligated to make special provisions for them." This obligation brought to the surface the fundamental tension underlying the origins of special education:

> *On the one hand, it was humanitarian and socially efficient to place responsibility for the handicapped in the single most important community institution—the public school—rather than placing such youth in residential schools or leaving them exclusively as a private responsibility of parents. On the other hand, while special education provided places for the physically handicapped, its impetus came from the fear that the 'morally' and 'socially' deviant, usually immigrants and the poor, represented social threats. The two concerns—humanitarian and controlling—were always in tension with one another, but because they were so often class-based, the latter tended to overwhelm the former, as the humanitarian concerns of special education became secondary to the desire to segregate all those the educational system found disruptive.*

The tension was acute in the conflicting desires "to enhance the lives of the handicapped and to protect 'normals' from the handicapped." The latter desire was often predominant, as this statement by an educator in 1924 reveals: "In the regular grades the feeble-minded and subnormal represent, as it were, an unassimilable accumulation of human clinkers, ballast, driftwood, or derelicts which seriously retards the rate of progress of the entire class and which often constitutes a positive irritant to the teacher and other pupils."

So the handicapped were brought into schools and segregated. The social degeneracy of "backward and defective children" thought to be "oversexed' and to "practice indecencies or worse" was given credence by the scientific authority of educational testing. Lewis Terman, indefatigable advocate of the IQ test, wrote that test results should form the criterion for separating handicapped from normal children. Referring to "indisputable evidence" based on "extensive and careful investigations," Terman blamed the mentally deficient "for at least one-fourth of the commitments to state penitentiaries and reform schools, for the majority of cases of chronic and semichronic pauperism, and for much of our alcoholism, prostitution, and venereal disease."

It was no wonder the reformers sought segregation. They took mental defects to be hereditary and saw test scores as accurate predictors of future development. In the years when programs were being expanded, one group, the physically handicapped, was in an anomalous situation because, in Lazerson's view, it "never carried the same political weight as the fear of neglecting the mentally subnormal."

By 1930 special education had gone from "virtually nonexistent to a subsystem within most large city school systems," and the states contributed by enacting permissive legislation. Lazerson cites Oakland, California, as an example that reveals much about the growth of special education:

> *First, the use of intelligence tests was crucial to the expansion of special education . . . . Second, the tests, special education, and ability grouping were part of a broader series of reforms designed to make the schools more flexible and progressive . . . . Third, major justification for the special classes was to isolate the 'subnormal' in order to free teachers to work with normal children. Fourth, the problem of poor school progress was considered primarily an immigrant problem. Fifth, insofar as it was recorded, principals and teachers were enthusiastic about ability grouping in their schools. Finally, Oakland's experiment with intelligence tests and special classes was heavily influenced by Lewis Terman and carried out by his students.*

While cities across the country adopted strategies similar to those carried out in Oakland, the state of California took the lead in legislating "what had come to be commonly accepted assumptions about the feeble-minded: their low intelligence was inherited and immutable; it caused crime and immorality; it was widespread and hidden until discovered by intelligence tests; and it was increasing and threatened to overwhelm society unless controlled through segregation and sterilization." In 1919 California passed a statewide law establishing classes for "misfits," and within a few years the classes were a regular feature of public schools. Such classes were "largely occupied by children of the poor and foreign born," according to Lazerson. Mentally subnormal children from middle and upper class families were usually able to avoid attending these classes, for they were treated as "individual deviants" who were not collectively a menace to society.

Most doubts about the success of special education focused on the need to expand and improve programs. After investigating the problems of the system in 1930, a White House conference reported what was common wisdom of the age: "extend special education to more handicapped children; make greater efforts at early diagnosis, treatment and training; coordinate services; modify the curriculum so that it conforms to abilities; increase the

SUGGESTED READING

Other IFG publications on special education include:

79-B4 EDUCATIONAL COST DIFFERENTIALS AND THE ALLOCATION OF STATE AID FOR ELEMENTARY/SECONDARY EDUCATION
Chambers, Jay G. (A computation of a cost of education index for state revenue allocations)

79-B11 THE DEVELOPMENT OF A COST OF EDUCATION INDEX: SOME EMPIRICAL ESTIMATES AND POLICY ISSUES
Chambers, Jay G.

79-B15 ESTIMATING THE COSTS OF EDUCATING HANDICAPPED CHILDREN: A RESOURCE-COST MODEL APPROACH—SUMMARY REPORT
Hartman, William T.

80-B1 POLICY EFFECTS OF SPECIAL EDUCATION FUNDING
Hartman, William T.

vocational training and oversee job placement and follow up; establish a National Council for Handicapped children and state advisory councils; and engage in more active campaigns to publicize the need and advantage of special education."

Even so, special education declined in the 1930s, though its stigma continued to be attached to many children. Lazerson says the decline was a gradual "disassociation" by educators and by school systems that "virtually ceased to acknowledge the existence of special education by the mid-1930s."

By that time, argues Lazerson, "special education had had its day. Its humanitarian thrust had always been secondary to the fear generated by the mentally subnormal. Once the current of fear had declined . . . once a structure had been established to place and thus control the deviants, special education seemed to have little to offer." It was, and always had been, "the setting for those the schools could not or did not want to educate."

After World War II special education was justified "for its potential economic returns, providing the handicapped with vocational training and job placement." The field became increasingly professionalized and technically specialized. Great population growth and the "discovery" of learning disabilities in the 1950s had a tremendous impact, generating more clients and widening the constituency for special education among white middle class parents. Lazerson notes that there was a "dramatic increase in the public and political presence of parents in the special education movement." This meant that "along with an expansion of places would come agitation for better programs."

In subequent years the attacks on program quality were paralleled by opposition to the racial biases of special education. These charges were made by well educated and organized ethnic groups that had not been around during the earlier transgressions against immigrants. The results were legal victories and a new coalition to change the system:

As white parents condemned the lack of spaces and the quality of special education for their handapped children, nonwhites attacked special education's discriminatory bias toward their children. The coalition was not an easy one, but by the early 1970s it had laid the basis for a new orientation toward the education of the handicapped. ■

COMMENTS

Continued from page 3

we discovered education policies that excluded significant numbers of handicapped children. In most states, if such a child was considered "unable to profit from an education," he or she did not have to be served by our public school systems. "Justifiable exclusion" could be based on a wide range of measures: IQ, ambulatory ability, and control of the sphincter were three common ones.

For over a decade the courts as well as federal and state legislation have almost completely eliminated the practice of justifiable exclusion—and with some surprising outcomes. For example, when the Pennsylvania courts declared schools responsible for educating retarded children, toilet trained or not, about 70 percent of those who had never gone to school because of a lack of toilet training were trained in one summer. So a change in policy does make a difference.

There remain some children, as we look to the 1980s, for whom exclusion is still an issue: children who are under the correctional systems of our states and who happen to be handicapped; handicapped children of migrant and other mobile families; handicapped children on American Indian reservations, some of whom have never seen the first day of schooling; and one of the worst problems of all, handicapped children who are wards of the court. So while we have made progress in the last ten years, there are children for whom the promise is not yet a reality.

The second issue concerning equality deals not only with getting handicapped children through the schoolhouse door, but with giving them equality of education once they are there. We have a term in education called "equal educational opportunity." At the turn of the century and particularly in the 1960s, we realized that some kids can't run the race as well as other kids—therefore they need assistance to be able to participate in education. This compensatory need changed our mathematical formula to "equal access to differing resources for equal outcomes."

If we believed in equal educational opportunity in the 1960s, why did we still exclude kids the system did not believe could complete the race as well as everyone else? They were the retarded kids, emotionally disturbed kids, and a variety of others. The confrontation over access for them was less on the grounds of the 14th Amendment to the Constitution than it was on differences of opinions over educational theory. But if we look at *Pennsylvania Association for Retarded Citizens v. the Commonwealth of Pennsylvania*, the courts's definitions of education recognizes that *all* kids are educable. For the kids whose educational goal at the moment may be learning to sit up and feed themselves, that is a valued educational objective. And if all kids are equally valued as learners, then the formula must change to differing resources for differing outcomes.

If integration is the goal, it will be crucial to know how the existing structure will be able to cope with the education of a more diverse population.

Most educators value some learning more than other learning. Can we conceive of a retarded child as the valedictorian? But what *is* the valedictorian? Is it the person we celebrate as the best learner in school or the person who best reflects our learning values? If we say our goal is to celebrate learning, we must be able to recognize it in all its forms.

The 1970s was a decade of progress—and we needed it. But progress itself does not produce equality. We can all have due process, we can have all the individualized education programs (IEPs) in the world, and still the children will not receive a quality education. Our goal should not be more hearings; it should be that the children learn more. We need to assure, from a policy perspective, that the process of meeting the immediate needs of children does not constrain experimentation, investment, and the quality of services.

We also need to make clearer distinctions between questions of procedure as related to service allocations and questions of interference in the actual behavior in the classroom. P.L. 94-142 and the court cases dealt with basic policy decisions about the service offered to handicapped children. IEPs never were intended to regulate the day-to-day behavior of the classroom teacher. But what we have seen across the country is that the process has been made a vehicle for constraining the creativity and professional judgement of the teacher on a day-to-day basis. This serves neither the children's interests nor the profession.

I would like to raise one other point concerning equality. What happened in the 1970s was not only a struggle on behalf of handicapped children to achieve equal status in education, but a similar struggle of a subsystem of the educational system, special education, to achieve equality with regular education. It was a struggle for resources, and special education has now become a partner from this standpoint. Anybody who has ever been involved in the schools knows that most of the battles that go on are within the elements of education, not the external forces. P.L. 94-142 is a classic example of the subsystem struggle in education—and that struggle goes on.

As we look at the 1980s in terms of school finance, we need to examine state financing systems to determine the degree to which they assist school districts to meet the requirements of P.L. 94-142. Special education policies imply that the costs of the system flow from the child's needs, rather than the traditional approach where the system determines the resources to be allocated. Cost is related to the population to be served and the size of the district. It is also related to the nature of the services—how a district decides who is handicapped and what services will be provided. Moreover, costs reflect the decisions made in the larger educational system. And finally, the costs are heavily influenced by factors outside of education altogether.

The controlling majority

The second of my four policy themes is that policy determines the degree to which minorities will be subject to abuse from the controlling majority. Some groups in our society are more vulnerable than others. Handicapped children in our schools are more vulnerable than their nonhandicapped peers because professionals are making decisions about their lives that may have an enormous impact. Often these children live or die, thrive or fail utterly, depending on other people's behavior.

What was the purpose of the procedural protection efforts in the 1970s? It was to provide a countervailing force so that the people making the decisions would have to consider the implications of their decisions for the child. As I look at due process now, much of what I see should never have been allowed to occur. We need better policy and better criteria to determine what issues require procedural protection. In the 1980s one of the issues is that our assumptions about procedural safeguards imply protection of the children, not the parents or the system.

An issue of the 1970s that will carry over is nondiscriminatory testing and evaluation. The problem is not to seek a nondiscriminatory test, but to stop discriminating against kids in the use of test information. We need to get this issue out of politics and the courts and into questions of technology and methodology. The problem is not that of a discipline or a group of people who want to hurt children, but a problem in which the technology is not consistent with policy demands.

Some kids can't run the race as well as the other kids—therefore they need assistance to be able to participate in education.

Least restrictive environment is another problem—often called "mainstreaming." But sometimes the rhetorical commitment exceeds what we really believe in—that this is a nation of diversity. Handicapped people have finally reached a point of having rights, self-identity and self-respect. What P.L. 94-142 talks about is not putting children where they don't belong. The law says that, to the maximum degree appropriate, handicapped children should be educated with nonhandicapped children and special classes and special schools should be provided when necessary.

The third policy theme is that policy affects how society will behave toward a class or group of individuals. There has been improvement in how our society perceives the handicapped individual, but what about discrimination within special education? A handicapped child who comes from a family whose primary language is not English—does he or she cease to have bilingual needs? Disability is only one aspect of people's lives. While P.L. 94-142 has brought about a tremendous change that will be felt not only in the next generation of adults but among their children and their children's children, still it is not enough.

One of the issues for the 1980s will be to look at social integration versus instructional integration. In special education we are attending well to the instructional integration of the children; we are not attending well enough to human relations. I would suggest that the big challenges are not going to be whether handicapped children are in chemistry classes, but whether they are going to the prom.

My last point is that policy affects how a group or class will perceive themselves. Perhaps if the 1970s produced any singular achievement, it was a change in the way handicapped people perceive themselves. What did PARC achieve? What did the *Mills* case achieve? What did Section 504 or P.L. 94-142 achieve? They contributed to making handicapped people believe in themselves as human beings, as people with rights, as people who have the dignity to live in the world. This is the most important achievement of the past decade.

We should note that even with our efforts at integration, the disabled have a culture of their own which requires some unique curriculum. Every handicapped individual who attends our schools should be taught about rights and how to exercise those rights. We need to provide handicapped children with more adult role models. We base our training assumptions on jobs that were available in the 1950s instead of training handicapped children for the realities of the year 2000.

In the 1980s we will see handicapped student organizations and other youth groups forming in our schools. Some will be militant as they were in the 1960s. To what degree will we be willing to foster our children's self-worth?

Our great goal is the quality of education for our children. I think we can redirect ourselves to some very new and worthy achievements. Whether we deal with them at the federal, state, or local levels is no matter. The question is the mission. ■

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Harold E. Geiogue

80-A12 RECURRENT EDUCATION ACTIVITIES AND FINANCE IN NEW YORK STATE
Norman D. Kurland

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IFG Policy Perspectives

INSTITUTE FOR RESEARCH ON EDUCATIONAL FINANCE AND GOVERNANCE

TUITION TAX CREDITS FOR SCHOOLS

A Federal Priority For The 1980s?

BY JAMES CATTERALL

Educators are about to witness a debate unlike any other in recent years. It concerns the proposed enactment of federal tax relief for parents sending their children to nonpublic schools. The idea is to rectify the claim of these parents that they must pay taxes unfairly for the public schools while paying directly for their own children's education. The form of tax relief in question, the federal tuition tax credit, is a resilient concept that will probably receive its most enthusiastic hearing to date in the 97th Congress.

Tax credits for educational expenses have been frequently but more quietly pursued in the recent past. Legislation enacted by some states has generally been rejected by state and federal courts, and hundreds of proposals have been filed in the U.S. Congress, where they still remain. But three recent developments suggest that the concept is very much alive on the federal agenda.

The first is a renewed interest among educational researchers, practitioners, and policy makers concerning the ramifications of choice in education, including the expansion of publicly financed options to embrace nonpublic schools. Recent state proposals for education vouchers, particularly in California and Michigan, are one indication of this interest.

Second, nonpublic schools are more healthy and prosperous institutions than we would have predicted a decade ago. This is especially true in urban areas where public school problems seem most concentrated and visible. As a result, public officials are increasingly mindful nowadays of the potentially greater role of the private sector in American education.

Third, the 1980 election, which has brought Republican control to the U.S. Senate as well as to the Presidency and Cabinet, has created leadership posts for past supporters of tuition tax credits. In general, the conservative cast of the new Congress is sure to generate sympathy for the concept.

How tuition tax credits work

The idea is simple. A parent pays tuition to a nonpublic school; the government in turn allows a credit against taxes owed by the parent for a portion of the expense. Specific plans vary as to what amount can be credited ($100 to $500 is common) and what portion of actual expenses can be credited (one-half is common). Additional features must be specified: Is the credit a refund so that parents with little or no tax liability can benefit? What are the eligibility criteria for schools? What levels of schooling or training are eligible?

Recent federal proposals have included provision for tax credits applying to both higher and elementary and secondary education, but the issues differ for several reasons. The finance structures are fundamentally different; the federal government has well established programs providing assistance directly to college students; religious instruction appears to be more imbedded in the programs of parochial schools and more separate in religiously affiliated colleges; and higher education is neither universal nor free. The balance of this discussion deals with tuition tax credits for elementary and secondary schooling.

Recent legislative activity

Since 1967, when the first of the recent proposals passed the U.S. Senate, the driving force behind tuition tax credits has been changing conditions in both public and nonpublic schools, and an unsatisfying search for ways of educating children with less money. The relative costs of public and nonpublic education, at least in crude comparisons, suggest that the private schools may be cheaper. There is a resurgent interest in nonpublic schools, marked by slight but steady increases in enrollments nationally since 1973, while the school age population has declined by about two percent each year.

In the late 1960s the chief proponents of tuition tax credits were nonpublic school representatives such as diocesan superintendents whose claim was that parochial schools were under such great fiscal strains that they faced massive tuition increases in order to survive; this in turn would drive away most of their pupils. The high point in nonpublic school enrollment in the U.S. occurred in 1968, and these schools lost a fourth of their pupils during the next five years. Since 1973, nonpublic enrollments have been remarkably stable, even in the face of annual declines in the U.S. school-age population. So the main early argument for tuition tax credits withered of its own accord.

New arguments have arisen in place of the old. The foremost is that nonpublic school parents pay for private schooling through tuition and also for public schooling in which their children do not participate. Should they be reimbursed for this "double" payment? A more general argument is the desire to promote competition and quality among all schools by encouraging choice. Would more children be empowered to leave schools that do not meet their expectations, and would their schoolmasters thus be forced to perform their jobs more effectively? Would schools in this way be more responsive to the educational needs and preferences of pupils and their families? Would there be a better match between pupil learning requirements and educational situations and thus an overall improvement in the efficiency of our educational efforts?

Finally, social issues abound in the de-

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bate over tuition tax credits. For example, who should choose the nature of a child's education—the family or the education professional? Should the power to choose be extended by the government's generosity to pupils and families who cannot afford nonpublic options? What are the boundaries between public education and other educational experiences? If volumes of Congressional testimony and scholarly production offer any indication, none of these questions is easily answered.

Out of this controversial environment grew an almost successful Congressional tuition tax credit plan, the Packwood-Moynihan proposal, in the 1978 Congress. The plan would have allowed the taxpayer to subtract as a credit from federal income taxes, or to claim as a refund, an amount equal to one-half of tuition and fee expenses for education. Upon enactment the credit would have been limited to $250 and restricted to allow participation by college undergraduates only. Two years after enactment the plan would expand to include elementary and secondary pupils, and the limit would rise to $500. The proposal allowed credits for expenses at any schools that would satisfy state compulsory attendance laws. A subsequent Packwood-Moynihan proposal, Senate Bill 1095 in 1979, offered credits of $250 per elementary and secondary student and no refund. The 1978 proposal eventually passed the full Senate, but only after the sacrifice of its provision for elementary and secondary schools. The House simultaneously passed a mild version (its first ever in hundreds of proposed bills) that would have provided for credits of one-fourth of tuition expenses up to $100 for nonpublic schools, and up to $250 for postsecondary education and training. A compromise on the two bills was scheduled to be included in the final tax bill of the 1978 session, but in the pressure to adjourn before the elections of that year the entire tax credit section was deleted because of disagreements on formulas for aid to elementary and secondary education—a sign of where the true political conflicts are on this issue.

Issues and implications

It is helpful to have a specific plan in mind when discussing tuition tax credits. The following paragraphs suggest a hypothetical plan similar to the Packwood-Moynihan proposal and describe the various issues involved. For purposes of analysis, it is assumed that a credit of one-half of expenses of up to $250 for tuition and fees at nonpublic elementary and secondary schools would be allowed per pupil against federal income tax liability. The refundability of the credit will be a topic of the subsequent analysis. Any schools allowed to enroll pupils by the individual states would be eligible.

COSTS

The cost of a federal tuition tax credit can be examined both in the short and long run. If the families of all five million nonpublic school pupils were to claim the maximum credit, the cost would be $1.25 billion per year to the federal government in the short run. However, it is not likely that all currently enrolled nonpublic school pupils will claim a full credit. Some schools do not charge $500 in tuition and fees, and their pupils will be able to claim something less than $250 (unless the schools raise charges to take advantage of the credit). Further, if the credit is not designed as a refund credit that would permit taxpayers to receive a tax refund when the allowable credit exceeds their tax liability, then some claimants will not get the full credit. The Packwood-Moynihan proposals would have provided for refundability in 1978 and not in 1979.

In the case of minimum or no tax liability for a portion of nonpublic school parents, and a nonrefunding credit, the following calculations may be applied to U.S. Census data that reveal nonpublic school participation by family income:

Cost and Distribution of Tuition Tax Credit

Family Income	*% Nonpublic School Families* in Each Category*	*Estimated Claimed Credit*	*Cost to Federal Government ($ millions)*
$0-5000	3.2%	$0	$0
$5000-15000	16.4%	$125	$103
$15000+	80.4%	$250	$1005
		Total	$1108

**Current Population Reports*, P-20 Series #333, October 1978.

This calculation assumes that the lowest income group of parents would get no credit because they owe no taxes. A low-to-medium income group would receive an intermediate-sized credit, because some of these taxpayers would have substantial tax liability from which to credit and others would not. The highest income groups are all assumed to have enough tax liability from which to take a $250 credit (despite known exceptions).

Such a hypothetical plan for elementary and secondary schools yields cost estimates in the $1.1 to $1.25 billion range annually for the federal government. This could be compared to the roughly $7 billion that the federal government presently spends annually on elementary and secondary education programs.

In the longer run two things might happen to increase the short-run cost estimate. The first is that the availability of the credit might induce enrollment shifts from public schools to nonpublic schools. If there are parents who await only a grant of funds to transfer their children into nonpublic schools, provision of a tax credit will generate new nonpublic school enrollments. If nonpublic enrollments go up by 20 percent, the costs of the tuition tax credit program could be expected to do about the same. An enrollment increase of this magnitude would bring the costs of the program to between $1.3 and $1.5 billion.

A second possibility is that once the credit is in operation there may be increasing pressure from recipients to make it larger. New participants in nonpublic schools would become additions to the tax credit constituency, so that after the idea is established in principle through enactment, battles over the mere size of the credit might be more easily won by proponents.

Effects on public school costs

Public school authorities fear an outpouring of pupils if the government gives them the money with which to leave. Proponents of tax credits counter that if the public schools are worthwhile, why should children leave? At this point the gloves hit the floor and the issues become lost in invective.

Proponents cite the fact that a parochial school might charge $400-$500 in tuition and fees while the neighboring public school typically spends at least $1500 per pupil. Thus a shift of pupils from the public to nonpublic schools might result in a sizeable saving to society. While there is evidence that nonpublic schools generally operate at lower costs than public schools, straightforward subtraction is not sufficient for a comparison. For instance, parochial schools operate at true costs that substantially exceed the tuition fee. In addition to parish contributions for operations and regular fund-raising events, many of the employees, including the teachers, are clerical. Their direct support

could be a part of a church budget, and not a school's, and many clerical employees work at low cash salaries that are supplemented by in-kind services.

How much would a public school save by losing a pupil? Public school costs are usually expressed as average expenditures per pupil in a district. These averages account for programs at upper and lower grade levels and for both special needs pupils such as the handicapped who are expensive to instruct and also regular pupils who are less expensive. The amounts of money spent on various individual pupils in a public system differ dramatically.

In general, nonpublic schools do not provide the special programs offered at comparatively high cost by public school districts. Only about 2.7 percent of sectarian schools provide programs for the handicapped, 3.0 percent of all nonpublic schools provide vocational education, and about 4.4 percent provide compensatory education. If such programs are not generally offered, pupils requiring these services will not be induced to change their schools by a tax credit. So it is plausible to assume that induced enrollment shifts are more likely for lower cost pupils. For this reason alone, an average cost comparison is probably not a justifiable basis for analyzing the cost implications of enrollment shifts.

Furthermore, how much of a school's costs can be saved when a pupil leaves? Teachers have fewer papers to grade, the bus has an extra empty seat, the playground swings wear out a little more slowly, but in none of these areas are costs directly or immediately recovered. If enough pupils leave to warrant laying off a teacher or selling off a school or closing a transport route, larger dollar savings will materialize. It is when the district can make reductions in its fixed costs of operation that substantial savings will be achieved by moving children from public to nonpublic schools. So, a massive shift would ease the public education budget substantially, but marginal shifts would leave public school budgets about where they are and at the same time raise federal expenditures by the amount of all claimed credits.

Equity among income groups

Will certain income groups receive more in tax credits than others? If the credit is available to everyone as a refundable credit, then all nonpublic school pupils will generate a credit for their families. If this is the case, the credits will be distributed according to this table based on U.S. Census figures:

Percent of Enrollment by Income Class of Family, 1976*

	Income Classes					
	Below $5000	*$5000-9999*	*$10000-14999*	*$15000-19999*	*$20000-24999*	*Over $25000*
Elementary						
Public	13.2	21.3	24.2	14.4	9.8	8.9
Nonpublic	4.8	11.7	26.1	20.9	11.4	18.2
Secondary						
Public	9.7	17.5	22.8	16.1	12.5	12.4
Nonpublic	3.2	10.2	17.3	17.0	17.9	23.8

*Source: *Current Population Reports*, P-20 Series No. 319, February 1978, Table 14. Rows do not sum to 100 percent due to incomplete reporting.

The largest income group for nonpublic school parents is $10,000-14,999 for elementary schools (reflecting the predominance of low-cost parochial schools among those schools), and over $25,000 for nonpublic secondary schools (reflecting the greater importance of the independent, more expensive schools at this level). The table illustrates that nonpublic school enrollments are drawn from higher income groups than public school enrollments. As for who receives the tax credits among the beneficiaries, roughly half of the credits for elementary parents would go to parents above the 1976 median family income level of $15,000. About 58 percent of the credits for secondary parents would go to these higher income parents.

Public school authorities fear an outpouring of pupils if the government gives them the money with which to leave.

This picture can be modified by the possibility that the plan may not offer refundable credits to taxpayers who do not owe sufficient taxes. These are likely to be the lowest income nonpublic school parents; the effect of nonrefundability would be to shift the distribution of benefits from tax credits toward the higher income families. As an example, we might consider the lower income single parent who has three children at the local parochial school. Due to customary tax deductions and credits this parent may have no federal tax liability and may not receive a credit. The more fortunate counterpart with an ample income and three boys at Andover would claim a $750 tax credit.

Equity among ethnic groups

Recent census data reveal the private school attendance patterns for American families in three categories of ethnic identity: white, black, and Spanish-origin families differ in the frequency with which they send their children to nonpublic schools.

Elementary Nonpublic Attendance Rates (%)

White	12.6%
Spanish	9.9%
Black	4.6%
ALL	11.8%

Secondary Nonpublic Attendance Rates (%)

White	9.0%
Spanish	5.0%
Black	2.9%
ALL	8.0%

Racial Composition of Enrollment:

	White	Black	Other
Public:	82.5	15.7	1.8
Private:	91.8	6.4	1.8

Sources: *Current Population Reports*, P-20 Series, #333, October 1978, #319, February 1978.

These tables indicate that white families are generally overrepresented in nonpublic schools. American families send 11.8 percent and 8 percent of their children to nonpublic elementary and secondary schools respectively. Figures for white families exceed these averages, while the figures for blacks and families of Spanish origin show attendance rates that are below the national average.

Thus, a tax credit that goes to nonpublic school families generally will go to more white families than if granted to the general school population. Spanish-origin families will receive credits in somewhat

smaller incidence than their proportion in the population. Black families will receive the smallest share of tax credits since they send the smallest proportion of their children to nonpublic schools.

Are tuition tax credits legal?

Tax credit plans cause the government to involve itself with religious schools and the church. This involvement may or may not be in violation of the establishment clause of the First Amendment to the U.S. Constitution. Arguments range from statements of what the Founding Fathers had in mind by the establishment clause to discussions of the particular effects of a plan under consideration.

Proponents of tax credits argue that the principal beneficiaries are child and family. The so-called "child benefit" theory aims at clarifying church-state issues with regard to government funding. Opponents claim that a significant beneficiary would be the religious schools or parishes themselves, that the institutions would advance particular religions at public expense, and that the credits in any case involve excessive government involvement in church affairs.

The U.S. Supreme Court has acted only once on tuition tax credits. In *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), the court struck down a New York program that provided credits for elementary and secondary school tuition. The court applied the newly established "Lemon test," following the precedent set by *Lemon v. Kurtzman*, 403 U.S. 602 (1971), for church-state relations under the First Amendment. Under this principle, which would be applied to a Packwood-Moynihan type of plan, the law must be secular in purpose, must neither enhance nor inhibit religion, and must not foster excessive government entanglement with religion. The constitutional journey for a tax credit proposal is best described as a passage between Scylla and Charybdis—the government must have some certainty that its funds are devoted to secular and legitimate purposes, but in designing controls to assure these ends it must avoid regulatory entanglement with the church. Fifteen years of Title I experience have probably convinced educators that federal evaluation and federal mingling often go hand in hand.

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Will the educational attainments of the affected pupil populations be enhanced by federal tuition tax credits?

The Public Interest

To what degree are the public and social purposes of education achieved in the nation's nonpublic schools? Nonpublic school supporters hold that their schools represent a vital stronghold for diversity in American education and for pluralism in the values transmitted to children. But if the government is to support nonpublic schools, the very reasons for having publicly funded schooling will lead to some hard questions.

If the government is going to help pay the tuition bill, what controls over the quality or character of schooling must follow? Must the schools be monitored, regulated and controlled to the point of guaranteeing a set of standards? Would this stifle the institutions beyond recognition? Would it entangle state and church beyond constitutional limits? Is the freedom of choice and exit enough to police the schools on matters of both public and private interest?

Whether they have considered the topic in such terms or not, large portions of the U.S. population have probably already decided these questions for themselves. The proponents of tuition tax credits believe that the public is served by the nonpublic sector and that these schools perform well where the public schools have failed. But opponents suspect that the advancement of religious beliefs or certain ideologies runs counter to the public mission; they further believe that pupils who attend schools that have parlayed minimal resources into adequate basic education programs might be shortchanging themselves in the development of skills and appreciations that flow from participation in the comprehensive curricula of many public schools.

Will the educational attainments of the affected pupil populations be enhanced by federal tuition tax credits? Buried among all the issues is the implication that the proposal is directed only obliquely and partially to the educational fortunes of children. Although there can be no simple prognosis, several conditional statements help to summarize the probable effects of an implemented program:

- If all pupils remain in their current schools, dollars will flow from the U.S. Treasury to nonpublic school parents; little else will change.
- If these dollars are taken from existing federal education programs (a reasonable supposition based on the fiscal plans of the new administration), some effects will filter back to the public schools, which depend on the federal government for about nine percent of their funds.
- The recipients of the tuition tax credit dollars will tend to be higher income, whiter Americans; the recipients of current federal dollars for schools tend to be lower income and minority children.
- If nonpublic schools raise their tuition charges in response to the plan, they might improve their offerings to their pupils, or their salaries, which are currently far below public school salaries.
- If public school pupils switch to nonpublic schools, the latter might capitalize on this increase in scale and offer a more diverse set of services.
- Such pupil shifts would exacerbate declining enrollments in public schools and probably initiate the flight of regular pupils without special needs.
- Finally, if public school professionals recognize tuition tax credits as a threat to their welfare because of the potential loss of pupils to nonpublic schools, then they might be impelled to conceive of actions that would attract more pupils; this could lead to educational improvements within the public schools. ■

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